

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LESLAW J. KORNECKI, Plaintiff, v. TEMPLE UNIVERSITY HOSPITAL, Defendant.	: : : : : : : : : : : :	Civil Action No.: 02-CV-3708
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**DEFENDANT TEMPLE UNIVERSITY HOSPITAL'S
PRE-TRIAL MEMORANDUM**

I. NATURE OF THE ACTION

Plaintiff Leslaw Kornecki was formerly employed by Defendant Temple University Hospital ("Temple" or "the Hospital"). He brought this action after his employment was terminated pursuant to Temple's work rules for downloading and purchasing pornography on Temple computers during work time. Plaintiff alleges that Temple retaliated against him for exercising his Family and Medical Leave Act rights in violation of 29 U.S.C.A. § 2611.

II. COUNTER STATEMENT OF FACTS:

Temple disputes the facts and/or the characterizations as set forth in plaintiff's pretrial memorandum. The facts of this case are as follows:

This case stems from the Hospital's discharge of plaintiff on March 4, 2002 after Hospital's investigation

revealed that plaintiff bought pornographic movies and accessed, viewed, and downloaded pornography to Temple computers during his employment. This misconduct qualified as "misuse of Temple property" [computers] and "conduct unbecoming a Temple employee," which are explicit grounds for discharge under Temple University Hospital's personnel policies. Although Mr. Kornecki admits participating in this conduct, at least to some degree, he denies that he accessed, viewed and downloaded all of the pornography that is apparent on his computers. Regardless of plaintiff's equivocating, there is no dispute that he engaged in conduct for which the Hospital appropriately discharged him pursuant to Temple work rules.

The discovery of the pornography and the related investigation occurred as follows: On December 31, 2001, Elaine Joyce, a nurse who received plaintiff's former Gateway laptop computer, discovered multiple pornographic images and files on that computer. She reported it to her supervisor, Marcia Redden, who in turn, began the process of investigating the source of the pornography.

After an investigation over the course of the next several months, and with the assistance of David Chamberlain, associate director of technical services, hundreds of pornographic images were discovered on plaintiff's Gateway laptop. Mr. Chamberlain also determined that Mr. Kornecki had

used Temple computers and his Temple e-mail address to order pornographic movies. Mr. Chamberlain also reviewed the World Wide Web log, which revealed that Mr. Kornecki's computers had accessed multiple hardcore pornographic sites. Mr. Chamberlain also found numerous pornographic images on Mr. Kornecki's new Sony laptop, a computer that Mr. Kornecki stated no one else had access to other than him.

Plaintiff at first insisted that the pornography was someone else's doing,¹ however when he was confronted with the evidence, he eventually admitted to accessing some of the pornography. Specifically, he now admits to viewing pornographic websites on at least thirty (30) separate occasions and purchasing three videos entitled: (1) "Assbusters"; (2) "Climax Shots #2: New Booty"; and (3) "Euro Hardriders 3." The evidence, however, shows that these three pornographic DVD's were not the only ones he purchased and Mr. Kornecki's credibility has been compromised.

Based on plaintiff's admission, the evidence available at the time of the hearing, and the nature of the pornography being viewed, and since Temple policies allow supervisors to exercise discretion in the discipline of employees for serious

¹ An argument that rings hollow, since Plaintiff admitted to providing others with his log in or logging other computer users on as him, and therefore, by Temple policy, was responsible for their conduct.

violations of Temple rules, and given that progressive discipline in these serious circumstances are not required, Temple terminated Mr. Kornecki on March 4, 2002.

On April 12, 2002, Temple reviewed Mr. Kornecki's termination and found it to be warranted.

III. COUNTER STIPULATED FACTS²

1. In July 1998, Temple University Hospital hired Mr. Kornecki.

2. On March 4, 2002, Temple University Hospital fired Mr. Kornecki for (1) misuse of Temple property, and (2) conduct unbecoming a Temple employee.

3. On April 12, 2002, after review of the facts and further investigation and after giving plaintiff an opportunity to present his point of view in a grievance hearing, Temple University Hospital determined Mr. Kornecki's termination was warranted.

IV. WITNESSES:

Liability:

Leslaw J. Kornecki
c/o George Bochetto, Esquire
1524 Locust Sreet
Philadelphia, PA 19106

Will admit to, among other things, accessing pornography during work hours, using Temple equipment.

² Plaintiff has not complied with providing numbered paragraphs of proposed stipulated facts, and therefore, we cannot specify agreement or disagreement on proposed stipulations.

Marcia Redden
c/o Neil J. Hamburg, Esquire
Hamburg & Golden, P.C.
1601 Market Street, Suite 3310
Philadelphia, PA 19103

Will testify, among other things, as to the decision to terminate plaintiff and the investigation of plaintiff's pornography use.

Elaine Joyce
c/o Neil J. Hamburg, Esquire
Hamburg & Golden, P.C.
1601 Market Street, Suite 3310
Philadelphia, PA 19103

Will testify, among other things, as to her discovery of plaintiff's pornography.

David Chamberlain
c/o Neil J. Hamburg, Esquire
Hamburg & Golden, P.C.
1601 Market Street, Suite 3310
Philadelphia, PA 19103

Will testify, among other things, as to the investigation of Mr. Kornecki's computers and the hearing on Mr. Kornecki's appeal of the termination decision.

James Mohan
c/o Neil J. Hamburg, Esquire
Hamburg & Golden, P.C.
1601 Market Street, Suite 3310
Philadelphia, PA 19103

Will testify, among other things, as to the decision to terminate plaintiff and the hearing on Mr. Kornecki's appeal of the termination decision.

Michael J. Grady
c/o Neil J. Hamburg, Esquire
Hamburg & Golden, P.C.
1601 Market Street, Suite 3310
Philadelphia, PA 19103

Will testify, among other things, as to the decision to terminate plaintiff and the hearing on Mr. Kornecki's appeal of the termination decision.

Joseph Ralston
c/o Neil J. Hamburg, Esquire
Hamburg & Golden, P.C.
1601 Market Street, Suite 3310
Philadelphia, PA 19103

Will testify, among other things, as to the decision to terminate plaintiff and the hearing on Mr. Kornecki's appeal of the termination decision.

Michelle Hackett
c/o Neil J. Hamburg, Esquire
Hamburg & Golden, P.C.
1601 Market Street, Suite 3310
Philadelphia, PA 19103

Will testify, among other things, as to Temple's FMLA application procedures, and Mr. Kornecki's application.

Richard Lutman
c/o Neil J. Hamburg, Esquire
Hamburg & Golden, P.C.
1601 Market Street, Suite 3310
Philadelphia, PA 19103

Will testify, among other things, about human resources policies, procedures and discipline.

Adam Ferrero
c/o Neil J. Hamburg, Esquire
Hamburg & Golden, P.C.
1601 Market Street, Suite 3310
Philadelphia, PA 19103

Will testify, among other things, as to the authenticity of the Temple web logs.

Damages:

Leslaw J. Kornecki
c/o George Bochetto, Esquire
1524 Locust Sreet
Philadelphia, PA 19106

V. EXHIBITS:

Exh. No.	Bates No.'s	Description of Exhibits
1.	TEMPLE 0001-0008	Kornecki's Temple Employment Application & Resume
2.	TEMPLE 00015-00018	Kornecki Initial Job Description - Temple
3.	TEMPLE 00090-00093	Kornecki Initial Personnel Action Authorization
4.	TEMPLE 0321-0328	Kornecki's Timesheets
5.	TEMPLE 00099-00106 041, 044-048 00022-00029	Kornecki's Performance Evaluations
6.	CHOP 0001-0088	CHOP Application and Resume
7.	ST. CHRIS 006-008 012-014 023-024	St. Christopher's Application, Resume & Job Description
8.	MH 02-07 ,09, 17	Main Line Health Systems Application, Resume, e-mail
9.	TEMPLE 0204-0205	TUHS System Access & Confidentiality Statement
10.	TEMPLE 0206-0208	TU Hospital IS Policies and Procedures - Computer Use
11.	TEMPLE 0209-0212	TU Hospital IS Policies and Procedures - Software Policy
12.	TEMPLE 0202-0203	Statement of Elaine Joyce
13.	TEMPLE 0192-0194 0197-0200 0244-0246	David Chamberlain's Investigation Notes and Findings
14.	TEMPLE 0170-0182	Termination Letter & Notice of 302 Hearing
15.	TEMPLE 0183-0184	302 Hearing Procedures
16.	TEMPLE 0114-0117 0188-0191	302 Hearing Results and Notes
17.	TEMPLE 0122-0123	Pornographic tapes ordered 12/27/01 - Desktop
18.	TEMPLE 0118-0121	Gateway Lap Top Pornographic Newsgroup list
19.	TEMPLE 00224	Gateway Lap Top Pornographic Picture - 08/10/00 9:23 am
20.	TEMPLE 442	Gateway Lap Top Pornographic Picture - 08/10/00 9:24 am
21.	TEMPLE 443	Gateway Lap Top Pornographic Picture - 08/10/00 9:24 am
22.	TEMPLE	Gateway Lap Top Pornographic Picture - 08/10/00 9:41 am

Exh. No.	Bates No.'s	Description of Exhibits
	444	
23.	TEMPLE 445	Gateway Lap Top Pornographic Picture - 08/10/00 1:12 pm
24.	TEMPLE 446	Gateway Lap Top Pornographic Picture - 08/10/00 1:13 pm
25.	TEMPLE 447	Gateway Lap Top Pornographic Picture - 08/10/00 1:13 pm
26.	TEMPLE 448	Gateway Lap Top Pornographic Picture - 08/10/00 1:15 pm
27.	TEMPLE 449	Gateway Lap Top Pornographic Picture - 08/10/00 2:51 pm
28.	TEMPLE 00216	Gateway Lap Top Pornographic Picture - 10/09/00 3:08 pm
29.	TEMPLE 00227	Gateway Lap Top Pornographic Picture - 10/09/00 3:10 pm
30.	TEMPLE 00225	Gateway Lap Top Pornographic Picture - 10/09/00 3:11 pm
31.	TEMPLE 00217	Gateway Lap Top Pornographic Picture - 10/09/00 3:11 pm
32.	TEMPLE 00223	Gateway Lap Top Pornographic Picture - 10/09/00 3:11 pm
33.	TEMPLE 00220	Gateway Lap Top Pornographic Picture - 10/18/00 10:58 am
34.	TEMPLE 00215	Gateway Lap Top Pornographic Picture - 10/31/00 11:30 am
35.	TEMPLE 00214	Gateway Lap Top Pornographic Picture - 10/31/00 11:35 am
36.	TEMPLE 00221	Gateway Lap Top Pornographic Picture - 10/31/00 11:35 am
37.	TEMPLE 00222	Gateway Lap Top Pornographic Picture - 10/31/00 11:36 am
38.	TEMPLE 450	Gateway Lap Top Pornographic Picture - 11/07/00 12:48 pm
39.	TEMPLE 452	Gateway Lap Top Pornographic Picture - 11/07/00 1:49 pm
40.	TEMPLE 451	Gateway Lap Top Pornographic Picture - 11/07/00 2:51 pm
41.	TEMPLE 453	Gateway Lap Top Pornographic Picture - 11/08/00 10:38 am
42.	TEMPLE 454	Gateway Lap Top Pornographic Picture - 11/08/00 10:38 am
43.	TEMPLE 00229	Gateway Lap Top Pornographic Picture - 11/08/00 10:39 am
44.	TEMPLE 455	Gateway Lap Top Pornographic Picture - 11/08/00 10:41 am
45.	TEMPLE 00218	Gateway Lap Top Pornographic Picture - 11/08/00 10:45 am
46.	TEMPLE 456	Gateway Lap Top Pornographic Picture - 11/08/00 11:23 am
47.	TEMPLE 457	Gateway Lap Top Pornographic Picture - 11/08/00 11:30 am
48.	TEMPLE 00219	Gateway Lap Top Pornographic Picture - 11/08/00 11:30 am

Exh. No.	Bates No.'s	Description of Exhibits
49.	TEMPLE 460	Gateway Lap Top Pornographic Picture - 06/18/01 3:43 pm
50.	TEMPLE 00226	Gateway Lap Top Pornographic Picture - 06/18/01 3:43 pm
51.	TEMPLE 459	Gateway Lap Top Pornographic Picture - 06/18/01 3:44 pm
52.	TEMPLE 458	FlashPSM Gateway Lap Top Picture - 06/19/01 10:47 am
53.	TEMPLE 267-281	Gateway Lap Top List of .JPG Files Sorted by Filename
54.	TEMPLE 247-266	Gateway Lap Top List of .JPG Files Sorted by Date
55.	TEMPLE 474-516	Desktop Internet Sites Visited from 9/6/01-9/14/01
56.	TEMPLE 517-533	Desktop Internet Sites Visited from 9/24/01-10/25/01
57.	TEMPLE 534-553	Desktop Internet Sites Visited from 10/30/01-11/20/01
58.	TEMPLE 554-579	Desktop Internet Sites Visited from 11/28/01-12/30/01
59.	TEMPLE 580-605	Desktop Internet Sites Visited from 12/31/01-1/26/02
60.	TEMPLE 606-638	Desktop Internet Sites Visited from 1/28/02-2/22/02
61.	TEMPLE 230-243	Samples for Sony Lap Top - No Date & Time Information
62.	TEMPLE 00415	Sony Lap Top Pornographic Picture - 12/27/01 2:43 pm
63.	TEMPLE 00414	Sony Lap Top Pornographic Picture - 12/28/01 12:23 pm
64.	TEMPLE 00416	Sony Lap Top Pornographic Picture - 1/7/02 12:34 pm
65.	TEMPLE 00438	Sony Lap Top Pornographic Picture - 1/7/02 12:34 pm
66.	TEMPLE 00433	Sony Lap Top Pornographic Picture - 1/7/02 12:35 pm
67.	TEMPLE 00421	Sony Lap Top Pornographic Picture - 1/7/02 12:36 pm
68.	TEMPLE 00417	Sony Lap Top Pornographic Picture - 1/7/02 12:37 pm
69.	TEMPLE 00437	Sony Lap Top Pornographic Picture - 1/7/02 12:40 pm
70.	TEMPLE 00422	Sony Lap Top Pornographic Picture - 1/7/02 12:40 pm
71.	TEMPLE 00439	Sony Lap Top Pornographic Picture - 1/7/02 12:41 pm
72.	TEMPLE 00430	Sony Lap Top Pornographic Picture - 1/7/02 12:41 pm
73.	TEMPLE 0410	Sony Lap Top Pornographic Picture - 1/22/02 3:39 pm
74.	TEMPLE 00424	Sony Lap Top Pornographic Picture - 1/22/02 3:43 pm
75.	TEMPLE	Sony Lap Top Pornographic Picture - 1/22/02 3:44 pm

Exh. No.	Bates No.'s	Description of Exhibits
	00413	
76.	TEMPLE 00412	Sony Lap Top Pornographic Picture - 1/22/02 3:44 pm
77.	TEMPLE 00411	Sony Lap Top Pornographic Picture - 1/22/02 3:44 pm
78.	TEMPLE 00425	Sony Lap Top Pornographic Picture - 1/23/02 4:04 pm
79.	TEMPLE 00431	Sony Lap Top Pornographic Picture - 1/23/02 4:05 pm
80.	TEMPLE 00427	Sony Lap Top Pornographic Picture - 1/23/02 4:06 pm
81.	TEMPLE 00426	Sony Lap Top Pornographic Picture - 1/23/02 4:07 pm
82.	TEMPLE 00435	Sony Lap Top Pornographic Picture - 1/23/02 4:09 pm
83.	TEMPLE 00432	Sony Lap Top Pornographic Picture - 1/23/02 4:10 pm
84.	TEMPLE 00436	Sony Lap Top Pornographic Picture - 1/23/02 4:11 pm
85.	TEMPLE 00440	Sony Lap Top Pornographic Picture - 1/23/02 4:11 pm
86.	TEMPLE 00419	Sony Lap Top Pornographic Picture - 1/23/02 4:13 pm
87.	TEMPLE 00428	Sony Lap Top Pornographic Picture - 1/23/02 4:17 pm
88.	TEMPLE 00434	Sony Lap Top Pornographic Picture - 1/23/02 4:22 pm
89.	TEMPLE 00423	Sony Lap Top Pornographic Picture - 1/23/02 4:25 pm
90.	TEMPLE 00409	Sony Lap Top Pornographic Picture - 1/28/02 12:44 pm
91.	TEMPLE 00418	Sony Lap Top Pornographic Picture - 1/28/02 12:45 pm
92.	TEMPLE 00429	Sony Lap Top Pornographic Picture - 1/28/02 12:46 pm
93.	TEMPLE 00441	Sony Lap Top Pornographic Picture - 1/28/02 12:48 pm
94.	TEMPLE 00420	Sony Lap Top Pornographic Picture - 1/28/02 12:49 pm
95.	TEMPLE 358-408	Sony Lap Top List of .JPG Files Sorted by Date
96.	TEMPLE 334-346	Temple University Work Rules
97.	TEMPLE 0019	Kornecki Receipt of Temple University Work Rules
98.	TEMPLE 0347-0351	Kornecki's FMLA Request
99.	TEMPLE 0352	Temple's Approval of Kornecki's FMLA Request
100.	TEMPLE 0461-0473	Temple University Work Rules Updated 11/97
101.		Unemployment Comp / Claimant Questionnaire
102.		Unemployment Comp / Employment Separation Questionnaire

Exh. No.	Bates No.'s	Description of Exhibits
103.		Unemployment Comp - Notice of Determination
104.		Plaintiff's Damages Calculation
105.		Kornecki 2001 Tax Return
106.		Kornecki 2000 Tax Return
107.		Kornecki 1999 Tax Return
108.		Kornecki 1998 Tax Return
109.		E-mail from Kornecki to Terry Gosso - dated 4/29/02
110.		Letter dated 10/3/00 from HBO to Marcia Redden describing Main User Level 3 Course - on 8/8/00-8/9/00
111.		Letter dated 3/7/00 to Marcia Redden describing Project Planning and Sched Analy on 2/29/00-3/1/00
112.		Letter dated 6/19/00 to Marcia Redden describing Project Planning and Sched Analy on 6/13/00-6/16/00
113.		E-mails from M. Redden to D. Chamberlain March 2002
114.		Kornecki's Complaint
115.		Temple's Interrogatories to Kornecki
116.		Kornecki's Answers to Temple's Interrogatories
117.		Temple's Request for Production of Documents to Kornecki
118.		Kornecki's Response to Temple's Document Request
119.		Letter from G. Bochetto to J Marshall dated 5/17/02
120.		E-Mail from C. O'Donnell to Kornecki dated 5/3/02
121.		Letter from C. O'Donnell to Kornecki dated 5/9/02
122.		Notes prepared by Kornecki dates April 12, 2001
123.		Outlook Express Screen printouts for Kornecki account
124.		Kornecki 2002 Tax Return
125.		Kornecki 2003 Tax Return
126.	TEMPLE 0639	11/07/00 Pornography order of Watcher 2
127.	TEMPLE 0640-0641	11/07/00 Confirmation of Order of Watcher 2
128.	TEMPLE 0642	10/16/00 Pornography Order – "Hit Her in the Shitter" & "Angry Anal #2"
129.	TEMPLE 0643-0644	11/13/00 Confirmation of Pornography Order – 555 Cumshots
130.	TEMPLE 0645-0646	10/5/00 Confirmation Pornography Order – Watcher 3
131.		Image Showing Watcher 2 Box Cover
132.	TEMPLE 0647-0852	Color copies of pornographic images found on Mr. Kornecki's Temple issued computers.

VI. ESTIMATED TRIAL TIME:

Temple estimates that the trial will take
approximately 3 to 4 days.

Respectfully Submitted,

/s/ NEIL J. HAMBURG
NEIL J. HAMBURG
Id. No. 32175
HAMBURG & GOLDEN, P.C.
1601 Market Street, Suite 3310
Philadelphia, PA 19103-1443
(215) 255-8590

Counsel for Temple University
Hospital

CERTIFICATE OF SERVICE

I, Neil J. Hamburg, hereby certify that defendant Temple University Hospital's Pre-Trial Memorandum has been filed electronically and is now available for viewing and downloading from the Court's Electronic Case Filing System. I further certify that a copy of the foregoing Pre-Trial Memorandum was served by regular mail on May 8, 2006, on the following:

George Bochetto, Esquire
Bochetto & Lentz, P.C.
1524 Locust Street
Philadelphia, PA 19106
Attorney for Plaintiff,
Leslaw Kornecki

/s/ NEIL J. HAMBURG
NEIL J. HAMBURG
HAMBURG & GOLDEN, P.C.